

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

GUO WENGUI a/k/a MILES KWOK,

Plaintiffs,

-against-

JOSHUA I. SCHILLER, individually, and BOIES  
SCHILLER FLEXNER, LLP

Defendant,

Index No.

SUMMONS

TO: JOSHUA I. SCHILLER  
575 Lexington Avenue, 7<sup>th</sup> Floor,  
New York, New York 10022

BOIES SCHILLER FLEXNER, LLP  
575 Lexington Avenue, 7<sup>th</sup> Floor,  
New York, New York 10022

**To the above-named Defendant:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York  
December 31, 2018

LAW OFFICES OF COHEN & HOWARD, L.L.P.  
Attorneys for Plaintiff

BY: 

Aaron A. Mitchell, Esquire  
766 Shrewsbury Avenue, Suite 301  
Tinton Falls, New Jersey 07724  
(732) 747-5202  
(732) 747-5259 (fax)  
amitchell@cohenandhoward.com

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**COMPLAINT**

Plaintiff Guo Wengui a/k/a Miles Kwok ("Guo" or "Plaintiff") for his complaint and action for money damages against Defendants, Joshua I. Schiller ("Schiller") and Boies Schiller Flexner, LLP ("BSF"), alleges as follows:

**PARTIES**

1. Plaintiff Guo is a Hong Kong citizen currently residing in New York, New York. Plaintiff left China at the end of 2014 and is currently seeking political asylum in the United States. Guo has been a longstanding critic of corruption within elements of the Chinese government and a leading advocate for government reform in China. Plaintiff Guo is often referred to by his anglicized name, Miles Kwok.

2. Defendant Schiller is a United States citizen and an attorney licensed to practice in the State of New York, who, upon information and belief, resides in New York, New York.

3. Defendant BSF is a Law Firm practicing in the state of New York with offices located at 575 Lexington Avenue, 7<sup>th</sup> Floor, New York, New York 10022.

### **JURISDICTION AND VENUE**

4. The Court has personal jurisdiction over this matter as Defendant Schiller is a resident of the State of New York and an attorney licensed to practice in the State of New York, as is his firm, Defendant BSF. Further, as described more herein, all interactions giving rise to the subject matter that forms the basis for this Complaint arose in New York.

5. Venue is proper in this Court because Guo is a resident of New York County, New York.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

#### **Plaintiff Guo's Relationship with Defendant Schiller and Defendant Schiller's Unprofessionalism**

6. Plaintiff Guo hired BSF to commence litigation on behalf of Ace Decade Holdings Limited, a company affiliated with Plaintiff Guo, against UBS AG in the Supreme Court of the State of New York, County of New York, in a matter captioned: *Ace Decade Holdings Limited v. UBS AG*, Index No. 653316/2015 ("UBS matter").

7. The UBS matter involved damages in excess of \$500 million as a result of UBS' fraud and misrepresentations to Guo pertaining to a margin call provision in a loan to buy shares of a Hong Kong company.

8. During BSF's handling of the UBS matter, Plaintiff Guo and his staff became dissatisfied with the caliber of representation they were receiving: including, *inter alia*, an appearance before the Court where Schiller, the lead attorney assigned to Plaintiff Guo's matters, was unprepared and did not bring critical documents with him.

9. Despite Schiller's unprofessionalism in the UBS matter, Plaintiff Guo retained BSF to handle three specific matters after he received personal assurances from Mr. Boies that Schiller would not be directly involved in these matters.

10. These three new matters were all major lawsuits against Plaintiff Guo and as such, Guo wanted assurances that Schiller would not be the lead attorney given the result in the UBS matter. The new cases involved: 1) an \$80 million lawsuit by a hedge fund which alleged breach of contract on a personal guarantee<sup>1</sup>; 2) a \$300 million defamation lawsuit by a global corporate conglomerate<sup>2</sup>; and 3) a \$60 million law suit by nine alleged foreign creditors seeking to enforce money judgments in New York.<sup>3</sup>

11. However, after retaining BSF to represent him on the new matters and paying a \$500,000.00 retainer, Guo later came to learn that Schiller was, to Guo's disappointment, the lead attorney assigned to all of his cases.

12. Defendant Schiller's unprofessionalism continued in his representation of Plaintiff in the new matters. This included Defendant Schiller routinely making derogatory and harassing statements about Plaintiff Guo and his staff, including one instance where he referred to Plaintiff Guo and his staff as "assholes" during a conference call with outside participants; publicly calling one of Plaintiff's employees a "whore" to a room full of crowded people; and as explained in more detail below, threatening Plaintiff's daughter.

13. While not an isolated occurrence, this incident shows the disdain which Defendant Schiller had for Plaintiff and the unprofessionalism that Schiller displayed during his representation of Plaintiff.

14. Fed up with both Schiller and BSF's unprofessionalism, Plaintiff Guo terminated his relationship with BSF.

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<sup>1</sup> *Pacific Alliance Asia Opportunity Fund L.P. v. Kwok*, Index No.: 652077/17, NY Supreme.

<sup>2</sup> *HNA Group Co. Ltd. v. Wengui*, Index No.: 653281/17, NY Supreme.

<sup>3</sup> *Beijing Zhong Zian Wei Ye Stainless Decoration Center v. Guo*, Index No.: 653176/17, NY Supreme.

15. On or about December 20, 2017, Defendant Schiller, unhappy that his unprofessional conduct led to the end of the attorney-client relationship, texted Plaintiff Guo's daughter, a talented and aspiring filmmaker, to question her credibility and threaten to destroy her reputation in the "art world" if Plaintiff Guo did not pay BSF \$2,000,000.00.

16. Defendant Schiller's attempts to extort \$2,000,000.00 from Plaintiff Guo through his daughter was an unconscionable act for anyone, let alone an attorney at law.

**FIRST CAUSE OF ACTION**  
**ATTORNEY MALPRACTICE**

17. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs "1" through "16", as though fully set forth herein.

18. After the demise of the relationship between Plaintiff Guo and Defendant Schiller, Defendant Schiller alleged that Plaintiff Guo owed him \$1,063,133.38 in unpaid legal fees. This despite BSF having in its possession a \$500,000.00 retainer which BSF could have applied to the balance at any time.

19. Based upon the Engagement Letter signed by Plaintiff Guo, Defendant Schiller brought the fee dispute before an arbitrator.

20. On or about May 18, 2018, during depositions in the fee arbitration, it was discovered that Defendant Schiller had turned over Plaintiff Guo's application for political asylum to his counsel without Plaintiff Guo's permission to do so.

21. Defendant Schiller caused portions of Plaintiff Guo's application for asylum to be read into the record.

22. As indicated above, BSF was retained to represent Guo in three additional matters after the UBS matter. While Guo had advised BSF during the course of their representation that Guo had applied for political asylum in the United States, Guo did not retain BSF to represent him

with respect to his political asylum application. Guo had shared this information, along with a copy of his political asylum application with Schiller and BSF in confidence.

23. An application for political asylum is a highly confidential document that cannot be disclosed without the written consent of the applicant, except as permitted by law or at the discretion of the Attorney General pursuant to 8 C.F.R. § 208.6.

24. Defendant Schiller did not have the Plaintiff Guo's written consent, the right under the law, or the approval of the Attorney General to turn over Plaintiff Guo's political asylum application or cause it to be read in to the record with outside parties present.

25. The purpose of keeping these records confidential is to "safeguard information that, if disclosed publicly, could subject the claimant to retaliatory measures by government authorities or non-state actors in the event that the claimant is repatriated, or endanger the security of the claimant's family members who may still be residing in the country of origin." See U.S. DEP'T OF HOMELAND SECURITY, U.S. Citizenship & Immigration Servs. Asylum Div., Fact Sheet: Federal Regulations Protecting the Confidentiality of Asylum Applications (Oct. 18, 2012).

26. The only reason Defendant Schiller had a copy of the application was because Defendants were provided a copy during the course of the attorney-client representation and in furtherance of that representation.

27. However, neither Defendant Schiller, nor Defendant BSF were hired to represent Plaintiff Guo for the political asylum application process nor was the political asylum part of the fee arbitration.

28. Defendant Schiller's disclosure of the asylum application was solely for Defendants benefit and intended to harm Plaintiff Guo.

29. Defendant Schiller was aware that the unauthorized disclosure of this document could result in both physical and financial harm to Guo, as he was aware the Chinese Ministry of State Security had already attempted to kidnap Plaintiff Guo on United States soil and had even hacked a former law firm who represented Plaintiff Guo seeking to steal this application from their servers.

30. As a result of Defendant Schiller's malpractice in disclosing Plaintiff Guo's application for political asylum, Plaintiff Guo suffered extreme emotional distress as he had to fear for the safety of both himself and his friends and family who remain in China and had to take extra security precautions. Additionally, Plaintiff Guo had to suffer great stress, anxiety, and concern as to who else Schiller had disclosed his asylum application in a attempt to cause harm to Plaintiff Guo.

31. As set forth herein, Plaintiff was damaged by Defendant Schiller's legal malpractice in an amount to be determined at trial, but not less than \$1 million.

**SECOND CAUSE OF ACTION**  
**BREACH OF FIDUCIARY DUTY**

32. Plaintiff incorporates by reference and realleges each and every allegation contained in paragraphs "1" through "31", as though fully set forth herein.

33. As set forth herein, Defendants Schiller and BSF represented Plaintiff Guo for a period of time in 2017.

34. It is well-settled that attorneys owe a fiduciary duty to their clients.

35. When Plaintiff Guo ended the attorney-client relationship with Defendants, they were in possession of a \$500,000.00 retainer paid by Plaintiff Guo.

36. Defendants alleged that Plaintiff Guo owed \$1,063,133.38 in unpaid legal fees, yet never applied the \$500,000.00 retainer to those outstanding bills, allowing the purportedly outstanding balances to accrue interest.

37. Upon information and belief, Defendant Schiller as lead attorney was entitled to a portion of all sums received from Plaintiff Guo.

38. In the arbitration award arising out of the unpaid bills, the arbitrator permitted Defendant Schiller to collect interest on each of the bills “at the rate of one percent per month, compounded monthly, beginning thirty days after the bill was presented.”

39. While Plaintiff Guo does object to the arbitrator’s findings, the fact Defendants did not apply the \$500,000.00 to the outstanding bills allows for a greater interest calculation.

40. The agreement between the parties allowed BSF to apply the \$500,000.00 retainer to any outstanding balance at any time.

41. Defendants did not apply the \$500,000.00 retainer to the outstanding bills because doing so would have decreased the interest that they could seek under the fee dispute.

42. As a client of Defendants, Plaintiff Guo was owed a fiduciary duty from Defendants.

43. Defendants breached that duty by not applying Plaintiff Guo’s retainer to the outstanding bills in order to accrue additional interest for their own pecuniary gain and to the financial detriment of their client, Plaintiff Guo.

44. This type of abhorrent and outrageous conduct -- attorney’s essentially using client’s funds to accrue interest for themselves -- cannot be condoned and rewarded and, in fact, must be severely discouraged by the Courts. In order to discourage this type of behavior, punitive damages are appropriate.



45. As set forth herein, Plaintiff Guo was damaged by Defendants' conduct, including not applying Plaintiff Guo's \$500,000.00 retainer to the outstanding legal bills, instead letting the bills accrue interest on behalf of BSF in an amount to be determined at trial, but not less than \$60,000.00.


**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request entry of Judgment in their favor and against Defendants as follows:

- A. That Defendant Schiller be held liable for the damages sustained by Plaintiff as a result of the claims asserted herein in an amount to be determined at trial, but estimated to be not less than \$1,060,000.00.;
- B. Along with punitive damages in the sum of \$2,000,000.00.
- C. Such other relief as the Court deems necessary and proper.

Dated: December 31, 2018  
White Plains, New York

COHEN & HOWARD, LLP  
*Attorneys for Plaintiff*

  
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By: Aaron A. Mitchell, Esq.  
766 Shrewsbury Avenue, Suite 200  
Tinton Falls, New Jersey 07724  
(732)-747-5202  
(732)-747-5259  
amitchell@cohenandhoward.com